

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE**

FUSION ELITE ALL STARS, et al.,

Plaintiffs,

v.

VARSITY BRANDS, LLC, et al.,

Defendants.

Civ. Action No. 2:20-cv-02600

JESSICA JONES, et al.,

Plaintiffs,

v.

BAIN CAPITAL PRIVATE EQUITY, et al.

Defendants.

Civ. Action No. 2:20-cv-02892

AMERICAN SPIRIT AND CHEER
ESSENTIALS, INC., et al.,

Plaintiffs,

v.

VARSITY BRANDS, LLC, et al.,

Defendants.

Civ. Action No. 2:20-cv-02782

DECLARATION OF NICOLE D. BERKOWITZ

I, NICOLE D. BERKOWITZ, pursuant to Title 28 U.S.C. Section 1746, hereby declare
as follows:

1. My name is Nicole D. Berkowitz. I am over twenty-one (21) years of age, of sound

mind, and competent to make this declaration. I make the following statements based on my own personal knowledge of the facts stated herein.

2. As counsel for U.S. All Star Federation, Inc. (“USASF”), I have conferred with opposing counsel regarding various discovery disputes, including the parameters to be applied to USASF’s review of electronically stored information (“ESI”).

3. Magistrate Judge Claxton issued an order on June 28, 2021, which addressed USASF’s Motion for Protective Order and *Fusion Elite* Plaintiffs’ Motion to Compel as to USASF. Plaintiffs waited until August 9, 2021—nearly six weeks after Magistrate Judge Claxton’s order instructing Plaintiffs to refine their search parameters and almost ten months after discovery began in *Fusion Elite*—to provide USASF with a search term proposal, which Plaintiffs identified as “the same search terms proposed by Plaintiffs . . . on May 27, 2021.”

4. In compliance with Magistrate Judge Claxton’s order, USASF provided a response to this proposal two weeks later, on August 23, 2021.

5. *Fusion Elite* Plaintiffs did not provide a further response to USASF until four weeks later, on September 22, 2021.

6. After receiving *Fusion Elite* Plaintiffs’ response on September 22, 2021, USASF ran numerous variations of searches in an effort to further refine *Fusion Elite* Plaintiffs’ proposed search parameters to target only those documents which were actually relevant to this case. Each search report involved multiple days of processing and analysis, and as a result, USASF provided its next proposal to *Fusion Elite* Plaintiffs on October 19, 2021.

7. *Fusion Elite* Plaintiffs took yet another four weeks to respond to USASF’s October 19 proposal, providing their next ESI proposal on November 20.

8. USASF is in the process of running additional search reports to identify any

remaining areas of dispute, but the parties are in agreement on many of the areas of inquiry.

9. USASF acknowledges that as a result of *Fusion Elite* Plaintiffs' repeated delays in providing search term proposals to USASF, a significant portion of USASF's document production is currently outstanding. Nevertheless, USASF anticipates being able to substantially complete production sufficiently in advance of the fact discovery deadline, such that Plaintiffs can depose USASF witnesses before the current deadline.

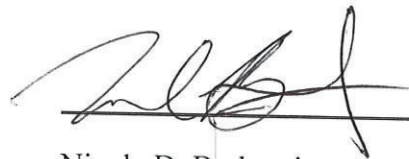
10. To date, none of the Plaintiffs have not requested any depositions from USASF, provided USASF with any Rule 30(b)(6) topics, or even identified which or how many USASF witnesses they intend to depose.

11. In addition, Plaintiffs also waited *ten months*—until October 1, 2021—to raise any issues with USASF's response to Plaintiffs' first set of interrogatories, served by USASF on December 28, 2020. USASF sent Plaintiffs a proposal for supplementation of these responses on November 2, 2021, but Plaintiffs have yet to respond.

Further Declarant Sayeth Not.

I declare under penalty of perjury that the foregoing is true and correct.

DATED: December 2, 2021.

A handwritten signature in black ink, appearing to read "Nicole D. Berkowitz", is written over a horizontal line.

Nicole D. Berkowitz